

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA B. HERRINGTON and DEPARTMENT OF THE AIR FORCE,
STRATEGIC AIR COMMAND, PEASE AIR FORCE BASE, NH

*Docket No. 99-559; Submitted on the Record;
Issued August 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that she sustained a recurrence of disability commencing April 14, 1998, causally related to her accepted employment injuries; and (2) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

The Office accepted that on January 31, 1990 appellant, then a 31-year-old secretary, sustained a left hand laceration, left digital nerve injury and a chronic pain syndrome from contact with a broken glass window in the performance of duty. Surgical repair of the left ulnar digital nerve was also authorized in 1990, a second tenolysis was performed in January 1991. Concurrent disability not due to injury was noted to include lupus.

Appellant returned to employment in the private sector on November 23, 1992 as an executive secretary, where she performed clerical duties including filing and typing all day on a computer.

On April 14, 1998 appellant called the Office and advised that she was having increased hand and wrist pain from typing all day on the computer and she inquired whether she could claim a compensation under the Federal Employees' Compensation Act as a recurrence of disability.

By letter dated May 1, 1998, the Office advised appellant of the factual and medical evidence that was necessary to establish a recurrence claim.

On May 10, 1998 appellant filed a claim for recurrence of disability commencing April 14, 1998. She claimed that when she returned to work in the private sector the movement of her fingers was limited and that she experienced continuous pain. Appellant stated that she had continuous medical treatment since 1993 and she described the recurrence as follows: "Over period of months pain and motion worsened with less days of lower pain levels. Hand and arm

numb[ness] on daily basis with discoloration of fingers and hand.” Appellant stopped work on April 15, 1998.

In support of her recurrence claim, appellant submitted medical reports dating from January 31, 1990 through the present, several of which had previously been submitted to the record. Appellant indicated that she had been under continuous medical treatment since 1993 for her left hand laceration injuries.¹

By report dated April 23, 1998, Dr. William P. Graham, III, a Board-certified plastic surgeon of professorial rank specializing in hands and appellant’s treating physician, indicated that appellant had seen him on April 20, 1998 for a “severe exacerbation that she experienced in her injured left upper extremity.” He reported that appellant noted swelling of her hand as well as discoloration of the tips of her fingers. Dr. Graham advised appellant that she could not continue the work she had been doing and must find some other job not requiring constant overuse of her hand.

In an attending physician’s report dated May 28, 1998, Dr. Graham reported appellant’s history of 1990 injury, noted that the injury of January 31, 1990 was the only injury appellant had sustained to her left hand, diagnosed multiple nerve and tendon injury in the palmar area of the left hand with residual stiffness and sensory deficit and checked “yes” to the question of whether the condition found was caused by the employment injury, noting that the injury “occurred at work on January 31, 1990.”

By report dated June 3, 1998, Dr. William S. Depp-Hutchinson, a Board-certified family practitioner, noted:

“For some time [appellant] was able to return to full use of her hand. Then over time pain/weakness recurred despite multiple therapies. The hand is now only minimal [sic] useful. The hand has severe pain that is typical of reflex sympathetic dystrophy.... (1) [Appellant] is presently disabled in light of this hand; (2) Original injury was sufficient to cause total disability of hand in a less motivated person; [and] (3) This type of failure after several good years was predicted by more than one doctor.”

By report dated June 8, 1998, Dr. Graham noted that appellant, who was left handed, sustained a left hand injury to the flexor tendons and digital nerves of the palm in January 1990,

¹ A February 24, 1993 report noted her history of injury and indicated that at that time she appeared to be regressing in her recovery postoperatively, with the left hand being painful, having decreased range of motion and decreased grip strength. An April 18, 1995 report identified appellant’s 1990 nerve and tendon damage and noted that she had experienced limited motion in the left hand since the operations and had had some regression of movement with the second, third and fourth digits “somewhat impaired” and with the inability to contract fully into the palm. A throbbing sensation with pain shooting along the fourth digit into the ulnar aspect of the arm and pain in the base of the first and second fingers was also noted. An October 21, 1997 report noted appellant’s original laceration injury and indicated that since she had experienced many problems, including stiffness of the hand and fingers secondary to tendon lacerations, and paresthesias of the fingers, numbness, tingling and severe pain and indicated that appellant’s symptoms were the result of the lacerations of the flexor tendons of the index, middle and ring fingers and sensory nerves in 1990.

and indicated that over the course of the last year she had experienced increasing pain in her left hand with aggravation of that pain by her work-related activities. He opined that the problems appellant was experiencing were related to the sequelae of the January 1990 injury and that these problems reflected the permanent status of that injury, which was decreased flexion of the digits, particularly the index and long fingers, decreased sensibility (sic) in the terminal portions of the index and long fingers. Dr. Graham opined: "These problems can only have come about as a consequence of the January 1990 injury. At the present time, [appellant] is incapable of carrying out her normal work activities and for all intents and purposes is disabled permanently from her position of secretary/typist and the use of her left hand in a chronically repetitive manner."

By decision dated July 24, 1998, the Office rejected appellant's recurrence claim finding that Dr. Graham's reports were not rationalized and were insufficient to establish causal relation, and that the evidence of record supported that appellant's April 14, 1998 left upper extremity problems came about as a result of her nonfederal employment.

The Board finds that this case is not in posture for decision.

It is an accepted principle of workers' compensation law that, when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.² In discussing how far the range of compensable consequences is carried, once the primary injury is causally connected with the employment, Professor Larson states:

"When the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury, the rules that come into play are essentially based upon the concepts of 'direct and natural results' and of claimant's own conduct as an independent intervening cause. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury."³

The medical evidence submitted from Dr. Graham, appellant's attending hand surgeon, noted that appellant was seen on April 20, 1998 for a severe exacerbation that she experienced in her injured left upper extremity. He also noted that appellant's accepted 1990 hand laceration injury was the only injury she had sustained to her left hand, he diagnosed multiple nerve and tendon injury in the palmar area of the left hand with residual stiffness and sensory deficit and checked "yes" to the question of whether there was causal relation with her 1990 employment laceration, indicating that the January 31, 1990 injury had occurred at work. By report dated June 8, 1998, Dr. Graham indicated that appellant, who was left hand dominant, sustained January 31, 1990 left hand laceration injuries to her flexor tendon and digital nerves of the palm, that over the course of the last year she had experienced increasing left hand pain due to

² Larson, *The Law of Workmen's Compensation* § 13.00.

³ *Id.* at § 13.11.

aggravation by her work-related activities and he opined that her current problems were related to the sequelae of the January 31, 1990 initial laceration injury, that these problems were permanent, and that these problems included decreased flexion of the digits, particularly of the index and long fingers and decreased sensitivity in the terminal portions of the index and long fingers. He opined that these problems could only have come about as a consequence of the initial January 1990 laceration injury and found that appellant was disabled permanently from her secretary position.

Dr. Depp-Hutchinson, appellant's family practitioner, noted that she had for some time been able to fully use her left hand, but that over time the pain and weakness recurred despite multiple therapies, leaving the hand now only minimally useful. He noted that appellant had severe hand pain, that she was disabled in light of this condition and that this type of failure after several good years was predicted by multiple doctors.

The Board finds that the medical evidence submitted by appellant is sufficient to require the Office to reopen the case for further development, particularly as there is no contrary medical evidence of record.⁴ It is also incumbent upon the Office to further develop the case and to make a determination as to whether the normal executive secretarial work at appellant's present employer is an independent intervening cause.

On remand the Office should create a statement of accepted facts and questions to be addressed and to refer appellant to an appropriate hand specialist for a rationalized opinion as to whether her disabling complaints in 1998 are causally related to the work-related nerve and tendon lacerations in 1990.

Further, the Board further finds that the issue of whether the Office abused its discretion in denying appellant's request for an oral hearing under section 8124(b)(1) is rendered moot by the disposition of the July 24, 1998 decision.

⁴ See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978). Proceedings under the Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done. This holds true in recurrence claims as well as in initial traumatic and occupational claims. In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge her burden of proving by the weight of reliable, substantial and probative evidence that she sustained a recurrence of total disability, they constitute substantial, uncontradicted evidence in support of appellant's claim and raise an uncontroverted inference of causal relationship between her allegedly disabling complaints and the original nerve and tendon lacerations that is sufficient to require further development of the case record by the Office. Additionally, there is no opposing medical evidence in the record.

Consequently, the decisions of the Office of Workers' Compensation Programs dated September 29 and July 24, 1998 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.
August 8, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member